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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/772,337	01/29/2001	Glenn Ricart	300 / 4	8685

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EXAMINER

BRAGDON, REGINALD GLENWOOD

ART UNIT	PAPER NUMBER
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2188

DATE MAILED: 12/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/772,337

Applicant(s)

RICART ET AL.

Examiner

Reginald G. Bragdon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 12-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 12-22, 26, 27, 29, 30, 35 and 36 is/are rejected.
- 7) ☒ Claim(s) 23-25, 28 and 31-34 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Specification

1. The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

The hyperlink on page 10, line 2 of the specification should be corrected.

Claim Objections

2. Claims 1-6, 12-14, 16, 21-28, 30, 33, and 36 are objected to because of the following informalities:

As per claim 1, line 9, change “it” to --the identified data increment--.

As per claim 1, line 10, change “it” to --the identified data increment--.

As per claim 12, line 7, change “regenerated” to --regenerate--.

As per claim 14, line 5, the comma after “copying” should be deleted.

As per claim 16, line 1, add --backup-- before “computer”.

As per claim 21, line 8, change “it” to --service provider system--.

As per claim 22, line 4, change “can” to --cannot--.

As per claim 30, line 3, add --said-- before “identified”.

As per claim 33, line 1, change “it” to --service provider system--.

As per claim 36, line 2, “access server” should be --service provider system--.

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All dependent claims are objected to as having the same deficiencies as the claims they depend from.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-6, 12-20, and 27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

As per claim 1, it is not clear where Applicant has support in the specification for “if it is not found, monitoring and copying data having specified properties determined to be indicative of data likely to be subject to said request” (emphasis added). Applicant has only disclosed in figure 2 that if data is not found in the provider server(s) copying the data from the subscriber (step 214).

As per claim 12, it is not clear where Applicant has support in the specification for “or using the copied data obtained by said means for monitoring and copying if it is not found” (emphasis added).

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As per claim 13, it is not clear where Applicant has support in the specification for “or said copied data obtained from said means for monitoring and copying”.

As per claim 14, it is not clear where Applicant has support in the specification for “or said copied data obtained from said means for monitoring and copying”.

As per claim 15, it is not clear where Applicant has support in the specification for “if not, monitoring communications between said subscriber and remotely located destinations and saving said data if it is found in said communications”.

As per claim 27, it is not clear where Applicant has support in the specification for “if it has not found a copy of at least a portion of the identified data...increment.”

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 13-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claim 13, lines 2-3, “the checking step” lacks antecedent basis.

As per claim 14, line 5, “said means for monitoring and copying” lacks antecedent basis.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 21-22, 26, 29-30, and 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anglin (6,026,414) in view of Garvey et al. (5,774,667).

As per claims 21 and 29, Anglin teaches a data backup system/method where a client 4 is connected to a backup server 6 through a proxy client 10 at a location A (“service provider”). In Anglin, files are maintained in the file server (“saving...at least some data...”) not as a result of a backup request (see column 2, lines 42-43). The client initiates a backup operation for a file (step 40, figure 3), where the client makes a call to proxy client 10 (step 44, figure 3) at location A to perform the backup operation (“receiving...a request for backing up at least one data increment”). The file represents a “data increment” and a file address is used to identify the file (“identifier”) in a request for backup (see column 6, lines 38-42). A determination is made as to whether the file is maintained in shared name space on a file server 8 (“service provider server”) at location A (“checking said at least one provider server to determine if it has a copy of at least a portion of the identified data increment”). See column 2, lines 46-52, and figure 3, steps 54-60. The file server provides the file to the proxy client, which in turn provides the file to backup server 6 (“backing up the data increment using the copy...from the provider server if it is found”). See column 2, lines 52-56.

Anglin also teaches a first network interconnecting the proxy client 10, file server 8, and backup server 6. This network could be a LAN, WAN, the Internet, etc... See column 3, lines 62-65.

As per claims 21 and 29, Anglin does not teach “subscriber servers”. Garvey et al. teaches, with reference to figure 1, a client/server local area network including a plurality of remote access servers 120, 180 (each a “remote access server”) coupled to remote clients (122,

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124, 126, 182, 184, 186). The LAN is coupled through a firewall router to an ISP 135. It would have been obvious to one of ordinary skill in the art to have modified Anglin implement a client/server local area network in place of client 4, as suggested by Garvey et al., because Garvey et al. teaches that local area networks allow computer users at different computer systems to easily share information and hardware. See column 1, lines 17-21.

As per claims 22 and 30, Anglin teaches using the data from the client 10 when the data is not in global shared name space. Furthermore, if the network interconnecting the proxy, file server, and backup server is a LAN, then the Ethernet interconnecting them is less costly than the Internet connecting location A to location B.

As per claims 26 and 35, files are maintained in the file server ("saving...at least some data...") not as a result of a backup request (see column 2, lines 42-43, of Anglin).

As per claim 36, data travels faster around a LAN than through an Internet connection, and therefore the LAN interconnecting the proxy, file server, and backup server has a higher bandwidth than an Internet connection between location A and location B.

Allowable Subject Matter

9. Claims 23-25, 28, and 31-34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. Applicant's arguments filed 01 November 2004 have been fully considered but they are not persuasive.

With respect to Applicant's amendments to claims 1, 12, and 15, the limitation added does not correspond to the limitation originally found in claims 3 and 20. The newly added limitation is not supported in the specification as set forth above.

Applicant should also note that original claims 3 and 20 would only be clearly allowable (i.e. without further search and/or consideration) if rewritten in independent form including all of the limitations of the base claim and any intervening claim. Written another way, original claim 1 would only be clearly allowable if rewritten to include the allowable dependent claim and any intervening claims.

With respect to Applicant's arguments concerning the Anglin reference, these are not persuasive. As set forth by Applicant on page 10 of the response, the backup server does save files upon request of a client. This is the same operation as claimed by Applicant (e.g. claim 21, step of receiving). However, it appears that the file server of Anglin does store files (see steps 54 and 60 of figure 3 where the file server provides the files to the proxy client) and these files were previously saved without a request from the client.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

12. Any response to this final action should be mailed to:

Box AF
Commissioner of Patents and Trademarks
Washington, D.C. 20231

All “OFFICIAL” patent application related correspondence transmitted by FAX must be directed to the central FAX number at **(703) 872-9306**:

“INFORMAL” or “DRAFT” FAX communications may be sent to the Examiner at **(571) 273-4204**, only after approval by the Examiner.

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Fourth Floor (receptionist).

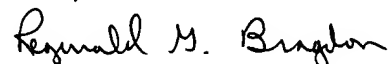
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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald G. Bragdon whose telephone number is (571) 272-4204. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 4:30 PM and every other Friday from 7:00 AM to 3:30 PM.

The examiner's supervisor, Mano Padmanabhan, can be reached at (571) 272-4210.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

RGB
December 6, 2004


Reginald G. Bragdon
Primary Patent Examiner
Art Unit 2188